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Constitutional Law

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I. Overview of Constitutional Law

B. Theoretical Basis of American Constitutional Law

§ 6. Effect of British constitutional law theory on American constitutional law

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 500

A.L.R. Library

[Executive privilege with respect to presidential papers and recordings, 19 A.L.R. Fed. 472](#)

Although there can be no doubt that the United States Constitution is derived in many, if not most, respects from the British unwritten constitution, the English Declaration of Rights of 1689,¹ and the English common law,² those who pay great homage to the English common law and its constitutional system sometimes fail to recognize that the essential difference between the English and American Constitutions is not that the English Constitution is unwritten and the American Constitution is written but that the English system is founded on the concept of parliamentary supremacy,³ whereas the American constitutional theory is founded on the concept that sovereignty itself resides with the people.⁴ Where the people are sovereign, their conception of their constitution exists apart from and above any transient legislative enactments.⁵

According to the theory of the English Constitution, absolute despotic power must reside somewhere in all governments, and in Britain, this power is entrusted to Parliament.⁶ The power of the British Parliament is so transcendent that it cannot be confined either for causes or persons within any bounds.⁷ This principle of the omnipotence of Parliament, however, has not been applied

to legislative bodies in America.⁸ Thus, it is recognized that the Congress of the United States as a legislative body is not vested with judicial powers, as is the British Parliament.⁹

Observation:

The right of the United States Senate to try all federal impeachment cases is nonetheless somewhat reminiscent of the judicial power of the English House of Lords.¹⁰

In the United States, the Congress and all of its members, as well as the President of the United States,¹¹ all state¹² and federal officials, and all state and federal courts and judges¹³ are as bound by the United States Constitution as are ordinary citizens.

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Footnotes

- 1 Harmelin v. Michigan, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (there is no doubt that the English Declaration of Rights of 1689 is the antecedent of our constitutional text).
- 2 Harmelin v. Michigan, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991); Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).
- 3 U.S. v. Winstar Corp., 518 U.S. 839, 116 S. Ct. 2432, 135 L. Ed. 2d 964 (1996).
- 4 In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions, 132 So. 3d 786 (Fla. 2014); State v. LaFrance, 124 N.H. 171, 471 A.2d 340 (1983); Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 5 Van Wingerden v. Lafayette Twp., 15 N.J. Tax 475, 1996 WL 267339 (1996), rev'd on other grounds, 303 N.J. Super. 614, 697 A.2d 565 (App. Div. 1997).
- 6 Pelzer, Rodgers & Co. v. Campbell & Co., 15 S.C. 581, 1881 WL 5930 (1881).
- 7 Davis v. State, 68 Ala. 58, 1880 WL 1380 (1880).
- 8 State ex rel. Star Pub. Co. v. Associated Press, 159 Mo. 410, 60 S.W. 91 (1900).
In drafting the Constitution, the Framers were not seeking to replicate in America the government of England; indeed, they set their plan of government out in writing in part to make clear the ways in which it was different from the one it replaced. Loving v. U.S., 517 U.S. 748, 116 S. Ct. 1737, 135 L. Ed. 2d 36 (1996).
- 9 In re Christensen's Estate, 17 Utah 412, 53 P. 1003 (1898).
- 10 Nixon v. U.S., 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993).
- 11 U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).
- 12 Passarelli v. Schoettler, 742 P.2d 867 (Colo. 1987).
- 13 Clark v. Dallas Independent School Dist., 701 F. Supp. 594, 51 Ed. Law Rep. 127 (N.D. Tex. 1988).

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